In holding that the refusal of the plaintiff to permit an examination should have been submitted to the jury, the court decided a question which has seldom been raised. Upon this point the court says: "The reason for refusing a physical examination of the plaintiff is not that the defendant is not entitled to have the benefit of the evidence, but because the court has no power to force the plaintiff to submit to such an examination. He has a right to submit or refuse, but, in case he should refuse, the defendant is entitled to have that fact go to the jury to be considered by them in determining upon the credibility and sufficiency of the testimony upon which he seeks to recover." This seems clearly reasonable, and lessons the evil effect of an unreasonable refusal to permit an examination, by giving the jury the right to draw from the refusal any inferences or presumptions as to the reason for such refusal. But the direct authority is almost, if not wholly, wanting. The dictum in Justice GRAY'S opinion in *Ry. Co.* v *Botsford*, 141 U. S. 255, *supra*, sustains this reasoning, as does also the dictum in *Kinney* v. *Springfield*, 35 Mo. App. 97 However, there is probably no good reason for the application of a different rule in these cases from that applied in other cases where the party declines to produce the best evidence in his power.

THE PORTO RICAN IS NOT AN ALIEN.—Little by little the Porto Rican begins to find out where he stands and what he is. Not long ago his country was declared not to be a "foreign country," *De Lima* v. *Bidwell*, 182 U. S. 1; his ships are "American," *Huus* v. *N. Y. etc., Co.*, 182 U. S. 392; as artist, he is "American," 24 Ops. Atty. Gen. 40, as sailor, he appears to be "American," 23 Ops. Atty. Gen. 400; and now it has been decided that he is not an "alien." *Gonzalez* v. *Williams* (Jan. 4, 1904), 24 Sup. Ct. Rep. 177.

By the treaty of cession and subsequent acts of Congress, the inhabitants of Porto Rico became "citizens of Porto Rico" whose allegiance is due to the United States; their civil rights and status are to be determined by Congress; officers are appointed for them; their laws are subject to a veto power by Congress; Porto Rico is declared a judicial circuit of the United States. The petitioner, Gonzalez, a native Porto Rican, was detained at the port of New York by the immigration commissioner as an "alien immigrant," under authority of an act of Congress providing that "aliens shall be excluded" who are "likely to become a public charge," and directing a return to the country from which such alien came. The court held that Gonzalez should be discharged. Mr. Chief Justice FULLER said:—

"We think it clear that the act relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof; and that citizens of Porto Rico, whose permanent allegiance is due to the United States; who live in the peace of the dominion of the United States; the organic law of whose domicile was enacted by the United States, and is enforced through officials sworn to support the Constitution of the United States,—are not 'aliens,' and upon their arrival by water at the ports of our mainland, are not 'alien immigrants' within the intent and meaning of the act of 1891."

There could be very little direct authority on the question. In previous treaties—with France, 1803, Art. III.; with Spain, 1820, 8 Stat. 252; with Mexico, 1848, 9 Stat. 922; with Russia, 1867, 15 Stat. 539, — it was agreed that the inhabitants of the acquired territories should eventually be admitted to citizenship. *In re Gonzalez*, 118 Fed. R. 941. The treaty with Spain, ceding Porto Rico, contains no such guaranty. The government contended that the test to be applied was citizenship; that while Porto Ricans in the international sense were "nationals" of the United States, they were not citizens thereof; that although nationals so far as "respects general allegiance and protection [they] have not lost their previous alien character by birth and race, and on every other test, so as to be entitled to unrestricted ingress into this country," *Suppl. Brief, Solic. Gen.*, p. 31; that the only differentiation from total alienage was the element of protection which the federal government assumed. This seems to have been the theory applied in the lower court in the same litigation. *In re Gonzalez* (C. C. 1902), 118 Fed. Rep. 941. Judge LACOMBE there stated:—

"The fourteenth amendmeut to the Constitution provides that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. It is not disputed that petitioner was by birth an alien. Unless in some appropriate way she has since been naturalized, she is still an alien. There is no suggestion that she was naturalized under the general laws prescribed by Congress regulating the admission of aliens to citizenship. . . . . Being foreign born and not naturalized, she remains an alien, and subject to the provisions of law regulating the admission of aliens who come to the United States."

The Supreme Court, however, held that the test was alienage.

In view of the guarded statements, the almost total absence of discussion, and the fact that the question was *narrowed* to the interpretation of the word alien within the meaning of a particular act, it is difficult even to surmise the effect of this decision.

MIMICRY AS INFRINGEMENT OF MUSICAL COMPOSITION.—What constitutes a wrongful public performance of a copyrighted dramatic or musical composition is a question not always easy to determine. For instance it is sometimes necessary to decide whether a performance is public or private. It may be public whether called so or not, or whether all persons be admitted indiscriminately or only a certain class, or whether a price of admission is charged or not. DRONE ON COPYRIGHT, 627. So the absence of scenery or costumes will not prevent a public performance from being an infringement. *Russell* v. *Smith*, 12 Q. B. 217, 64 E. C. L. 217. On the other hand, mere similarity in the general plan of the performance has been deemed to be no infringement. *Barnes* v. *Miner* (1903), 122 Fed. 480.

A novel case on this question is *Bloom & Hamlin* v. *Nixon* (1903), 125 Fed. Rep. 977. An injunction was asked to restrain Miss Templeton from imitating the manner, gestures and actions of a Miss Faust. It was held that mimicry would not be enjoined. The court said: "The question remains is the song in fact being performed or represented? In my opinion the question should be answered in the negative. What is being represented are the